

## **ATTACHMENT C**

### **MUNICIPAL CONTRACTS STATE-ASSISTED BUILDING PROJECTS MODEL BIDDING INSTRUCTIONS**

#### **APPENDIX TO BIDDING INSTRUCTIONS**

#### **GOALS FOR PARTICIPATION BY MINORITY BUSINESS ENTERPRISES (MBE) AND WOMEN BUSINESS ENTERPRISES (WBE) (EXECUTIVE ORDER 390, M.G.L. c. 7, s. 4)**

**The applicable goals for minority business enterprise (MBE) and woman business enterprise (WBE) participation established for this Contract are as follows:**

**MBE: \_\_\_\_ % of the Contract Price. WBE: \_\_\_\_\_ % of the Contract Price.**

#### **A. MBE AND WBE PARTICIPATION**

1. The apparent low Bidder's compliance with the requirements of this Section is a pre-requisite for receiving the Award of the Contract.
2. The MBE and WBE participation goals for this Contract are as set forth above. The Awarding Authority reserves the right to reduce or waive the MBE or WBE participation goals established for this Contract upon written request made by a general Bidder within the time frame set forth in paragraph 9 below. Such written request must demonstrate to the satisfaction of the Awarding Authority that it is not feasible for a non-MBE or non-WBE general Bidder to meet the goals established for this Contract based upon any or all of the following: (i) actual MBE/WBE availability, (ii) the geographic location of the project to the extent related to MBE/WBE availability, (iii) the scope of the work, (iv) the percentage of work available for subcontracting to MBE/WBEs and/or (v) other relevant factors, including a documented inability by the prospective Bidder to obtain commitments from MBE/WBE subcontractors sufficient to meet the MBE/WBE goals after having made a diligent, good faith effort to do so. All of the foregoing documentation shall accompany the Bidder's request for a reduction or waiver of the MBE/WBE participation goals. Such documentation shall include, at a minimum, the following:
  3. A list of all items of work under the Contract that the Bidder made available for subcontracting to MBE/WBEs. The Bidder shall identify all items of work, other than work to be performed by filed sub-Bidders, that the Bidder did not make so available and shall state the reasons for not making such work available for subcontracting to MBE/WBEs. The Bidder shall also demonstrate that, where commercially reasonable, subcontracts were divided into scopes or tasks capable of being performed by MBE/WBEs.
  4. Evidence that the Bidder sent written notices soliciting Bids or proposals to perform the items of work made available by the Bidder for subcontracting to all MBE/WBEs qualified to perform such work. The Bidder shall identify (i) each MBE/WBE solicited, and (ii) each MBE/WBE listed in the SDO directory under the applicable trade category that was not solicited and reasons therefore. The Bidder shall also state the date that notices were mailed and provide a copy of the written notice(s) sent.
  5. Evidence that the Bidder made reasonable efforts to follow up the written notices sent to MBE/WBEs with telephone calls or personal visits in order to determine with certainty whether the MBE/WBEs were interested in performing the work. Phone logs or other documentation must be submitted.

6. A statement of the response received from each MBE/WBE solicited, including the reason for rejecting any MBE/WBE who submitted a bid or proposal.
7. Evidence of reasonable efforts made, if any, to assist MBE/WBEs that needed assistance in obtaining bonding or insurance, or lines of credit with suppliers if the inability of MBE/WBEs to obtain bonding, insurance, or lines of credit is the reason given for the Bidder's inability to meet the MBE/WBE goals.
8. The Bidder may also submit any other information supporting its request for a waiver or reduction in the MBE/WBE participation goals, including without limitation evidence that the Bidder placed advertisements in appropriate media and trade association publications announcing the Bidder's interest in obtaining bids or proposals from MBE/WBEs, and/or sent written notification to MBE/WBE economic development assistance agencies, trade groups and other organizations notifying them of the Contract and the work to be subcontracted by the Bidder to MBE/WBEs. The Bidder shall also submit any other information reasonably requested by the Awarding Authority to show that the Bidder has taken all actions that could reasonably be expected to achieve the MBE/WBE participation goals.
9. If **filed Sub-Bids** are solicited for this Contract, requests from prospective general Bidders to reduce or waive the MBE/WBE participation goals for this Contract must be received by the Awarding Authority no later than five (5) working days after the list of filed sub-Bidders is mailed by the Awarding Authority to persons who have taken out plans for the Contract. If there are no filed sub-Bids solicited for this Contract, requests to reduce or waive the MBE/WBE participation goals for this Contract must be received by the Awarding Authority no later than ten (10) calendar days before the date set for the receipt of general Bids. **THE AWARDING AUTHORITY WILL NOT CONSIDER ANY REQUEST TO REDUCE OR WAIVE THE MBE/WBE PARTICIPATION GOALS FOR THIS CONTRACT THAT IS RECEIVED AFTER THESE DEADLINES. Any reduction or waiver of the MBE/WBE participation goals for this Contract will be made by written addendum mailed to all persons who have taken out plans for the project.**
10. No later than five (5) working days after the opening of general Bids, the apparent low Bidder shall submit the following documents to the Awarding Authority's Affirmative Marketing Construction Officer (AMCO): (i) a completed Schedule for Participation by MBE/WBE ("Schedule for Participation") in the form provided by the Awarding Authority showing MBE/WBE participation in amounts equal to or exceeding the MBE/WBE participation goals for this Contract, (ii) a completed Letter of Intent in the form provided by the Awarding Authority for each MBE/WBE listed in the Schedule for Participation, and (iii) a SDO most recent certification letter for each MBE/WBE listed in the Schedule of MBE/WBE Participation showing that the MBE/WBE is certified in the area of work for which it is listed on the Letter of Intent.
11. Each Letter of Intent shall identify and describe the work to be performed by the named MBE/WBE (the "MBE/WBE Work") with enough specificity to permit the Awarding Authority to identify the particular items of contract work that the MBE/WBE will perform for MBE/WBE participation credit. The Awarding Authority reserves the right to reject any Letter of Intent if the price to be paid for the MBE/WBE Work does not bear a reasonable relationship to the value of such work under the Contract as determined by the Awarding Authority.
12. Within five (5) working days after receipt of the Schedule for MBE/WBE Participation, Letters of Intent, and SDO most recent certification letter, the Awarding Authority shall review and either approve or disapprove the apparent low Bidder's submissions. If the apparent low Bidder has not submitted an appropriate Schedule for MBE/WBE Participation and appropriate Letters of Intent and SDO most recent certification letter establishing that the MBE/WBE participation goal for the project will be met, the apparent low Bidder will be considered ineligible for Award of the Contract and the Awarding Authority will Award the Contract to the second lowest eligible and responsible Bidder, subject to said Bidder's compliance with these conditions. If funds are insufficient to award to the second lowest Bidder, the project may have to be re-bid.

13. The Bidder's attention is called to the General Conditions of the Contract which requires the Contractor to submit, within thirty (30) days of the Contract Date, signed subcontracts with all subcontractors or a purchase order or invoice from each material supplier and/or manufacturer listed on the Schedule for MBE/WBE Participation.
14. A filed sub-Bidder is not required to submit a Schedule of MBE/WBE Participation with its Bid. A filed sub-Bidder may, at its option, submit a Letter of Intent with its Bid if it is a SDO certified MBE/WBE. If a filed sub-Bidder intends to sub-subcontract work to a SDO certified MBE/WBE, and the awarding authority permits limited sub-sub contracting for purposes of MBE/WBE participation, and the filed sub-Bidder wishes that sub-subcontract to be credited toward the participation goals for this Contract, the filed sub-Bidder should submit a Letter of Intent from that MBE/WBE with its Bid.